

Zoning Board of Adjustment & Appeals
March 27, 2015

To: Mrs. Betty Fletcher Chair, Zoning Board of Adjustment & Appeals and Members of the Zoning Board of Adjustment and Appeals

Case Number: 1108

Location of Subject Property

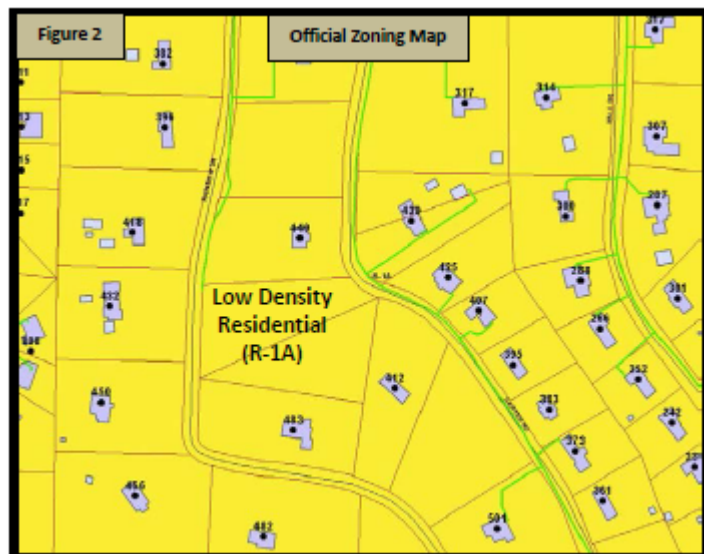
The subject property is *Lot 14, Rainbow Mountain Heights Subdivision* which is located west of Slaughter Road and east of Rainbow Drive, also known as *440 Carter Road*.

Background

Rainbow Mountain Heights Subdivision, which was platted in 1959, is zoned *R-1A, Low Density Residential* and includes 17 large lots, ranging in size from one and one-half (1½) acres to over three (3) acres. The subject property measures 1.92 acres and contains a two-story, single family residence, constructed in 1965.

Applicant's Request

The applicant plans to renovate the existing house to accommodate his family's needs. He proposes adding additional living space as well as



outdoor entertainment areas, to include a large deck with a swimming pool and a separate outdoor kitchen. All of the proposed renovations are permitted in the R-1A Zoning District.

City of Madison Zoning Ordinance, Section 5-9-2 states: Private swimming pools constructed in a residential district, as an accessory use to a residence, shall be located in the rear yard only and shall maintain a minimum rear yard of ten (10) feet.

The applicant is requesting a variance to *City of Madison Zoning Ordinance Section 5-9-2*, to allow a swimming pool constructed in a residential district, as an accessory use to a residence, to be located in the south side yard of the property.

ZBA Review Criteria & Staff Analysis

In order for the Zoning Board of Adjustment and Appeals to grant a variance, the applicant must establish a hardship and demonstrate the request satisfies the additional provisions in Section 10-5-3 of the Zoning Ordinance.

Planning Staff is also charged with reviewing each request made to the board and following the same criteria in making a recommendation. Staff has provided suggested findings (in italics) for each criteria, to be reviewed and accepted, modified, or rejected by the Zoning Board, after public comment and hearing directly from the applicant.

- a. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Ordinance on the district in which it is located and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

Swimming pools, as an accessory to a residence, are commonly built in the R-1A Zoning District, as well as other residentially zoned districts. The multi-tiered configuration of the outdoor entertainment area, including the swimming pool, deck and fencing, will provide screening from Carter Road and the undeveloped properties to the north (right side facing) and south (left side facing).

The only single family residence, immediately adjacent the subject property, is located across Carter Road at 439, and sits approximately twenty (20) feet lower than the grade elevation of the site of the proposed swimming pool. Approximately fifty (50) feet of open space, between the swimming pool deck and the south side property line, will allow for a side yard of over three (3) times the required fifteen (15) feet in the R-1A Zoning District.

With applicant's proposed screening, with fencing and landscaping, the placement of a swimming pool in the side yard should neither be injurious to the neighborhood nor cause a detrimental impact on the welfare of the public.

- b. The granting of the variance will not permit the establishment of any use which is not permitted in the district.**

A swimming pool, as an accessory to a residential dwelling, is permitted in the rear yard of lots in residentially zoned districts. Granting the requested variance, to permit swimming pool placement otherwise, does not convey to the applicant a privilege denied to other property owners. Further, the permitted use of the subject property, as single-family residential, will not be changed by granting the requested variance.

- c. **There must be proof of unique circumstances or conditions fully described in the findings and applicable to the land or buildings for which the variance is sought, such circumstances or conditions being peculiar to such land or buildings and generally having no application to land or buildings in the district, and which circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.**



The subject property has a considerable slope and an approximate fifty (50) feet of rise from Carter Road to the rear property line. Further, the rear half of the property has large, underground rocks and boulders. In order to place a swimming pool in the rear yard, as required in Section 5-9-2, extreme excavation and/or blasting would be required.

- d. **There must be proof of unnecessary hardship. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created nor can it be established on this basis by one who purchases with or without knowledge of the restrictions. It must result from the application of this Ordinance; it must be suffered directly by the property in question; and evidence of other variances or non-conformities granted under similar circumstances shall not be considered.**

The topographic characteristics of the subject property prevent development as prescribed in Section 5-9-2. The strict application of the ordinance will also impede the redevelopment of a lot in one of Madison's older subdivisions, a practice to be encouraged and not restricted.



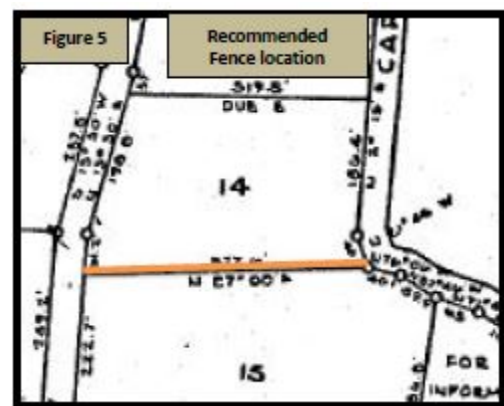
- e. **That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as requested from the Zoning Board of Adjustment is the minimum variance that will accomplish this purpose.**

The rear yard of the subject property has many underground rocks and boulders. The applicant's only option is to place the swimming pool in the side yard.

- f. **That the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.**

The placement of an accessory pool, in the side yard, will not adversely affect adjacent properties, utilities, traffic flow nor cause an increase in fire danger. Approximately sixty (60) feet of open space will remain, between the proposed swimming pool and surrounding deck, to the closest, side property line, to the south, and approximately ninety (90) feet from the front property line, along Carter Road.

Adopted building codes require fencing, with locking gates, to surround residential swimming pools. However, it is not mandatory that the fence be constructed of opaque material. Planning Staff recommends that an opaque (privacy) fence, with a minimum of six (6) feet in height, be required along the south property line, adjacent to lot 15. (Depicted in orange on Figure 5)



- g. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.**

All residential zoning districts permit accessory swimming pools, by right. Granting the requested variance will allow the applicant to use his property in the same way, and as completely, as owners of other residentially zoned properties.

Staff Recommendation

Staff recommends granting the applicant's request for a Variance to *City of Madison Zoning Ordinance Section 5-9-2*, to allow a swimming pool constructed in a residential district, as an accessory use to a residence, to be located in the side yard, as presented and with the contingency that an opaque (privacy) fence, with a minimum of six (6) feet in height, be required along the south property line, adjacent to lot 15.